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THE AREAS OF STATE CONCERN ACT



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MONTANA DEPARTMENT OF
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PAPER

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HOUSE BILL 770

THE AREAS OF STATE CONCERN ACT

PUBLISHED BY THE
MONTANA DEPARTMENT OF COMMUNITY AFFAIRS

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PREFACE

This publication was originally prepared as an information paper for H.B. 770, the Areas of State Concern Act, which was submitted during the 1977 Legislature. The hearing on H.B. 770 was held before the House Natural Resources Committee on February 23, 1977. The committee vote was tied and the bill was passed to the House of Representatives without recommendation on February 24th. The bill was defeated in the House on February 26th by a 54 - 44 vote.

Although the legislation itself was defeated I believe that the paper may be of value to those persons interested in the evolution and status of land use planning in Montana. The paper is a reasonably accurate reflection of the first Judge administration's policy on land use planning and will also serve to acquaint the reader with the major concepts involved in "critical areas" legislation. For the reader's benefit I have appended to the original paper a copy of H.B. 770, a summary of the bill with commentary prepared by DCA's Planning Division, and the minutes from the House Natural Resource Committee hearing on the bill.

David Cole, Chief
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August 12, 1977

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House Bill 770
The Areas of State Concern Act

Introduction

On January 5, 1977, Governor Thomas L. Judge presented his State of the State Address to the 45th Montana Legislature. In it, he called for the creation of a Commission for Areas of State Concern. "That Commission, composed of five state-appointed and four locally-appointed members, would provide the means by which the state and local governments may jointly identify areas of mutual concern and share the responsibility for planning and management." The commission called for by the Governor would be established by House Bill 770, the Areas of State Concern Act, introduced by Representative Hal Harper of Helena.

While this concept may be unfamiliar to many Montanans, that is not the case nationally. To date, fourteen states* have created processes for designating areas of state concern (often called "critical areas"), including two of Montana's neighboring states, South Dakota and Wyoming. As a result of the increasing awareness of environmental problems during the 1970's, there has been a nationwide reevaluation of the respective roles of state and local government in land use planning. The course that each state has taken has varied greatly depending upon each state's individual characteristics and

* Colorado, Florida, Hawaii, Maine, Maryland, Minnesota, Nevada, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Wisconsin, and Wyoming

needs. Several states have assumed strong state controls over planning including Florida, Hawaii, Maine, New York, Oregon and Vermont. At least nine states have required local governments to adopt comprehensive plans or zoning including two of Montana's neighboring states, Idaho and Wyoming, which mandated preparation of local plans in 1975.

History of Montana's Planning Legislation

Montana's framework for state involvement in planning was first established by the passage of the Montana Planning and Economic Development Act in 1967. The Act, sponsored and promoted by then-State Senator Thomas L. Judge, established for the first time a significant supportive role for state government for planning at the local government level. State assistance for local planning efforts was provided by the Department of Planning and Economic Development. In 1971 the Montana Legislature enacted House Bill 79, which first authorized counties to plan and zone on a county-wide basis. In 1973 the Legislature passed the Montana Subdivision and Platting Act which required all governing bodies to adopt subdivision regulations and provided for review of proposed subdivision by local planning boards. In 1975 the 44th Legislature enacted the Montana Economic Land Development Act. The act requires that each local governing body prepare and adopt a land use plan by January, 1978. The law seeks implementation of the plan through a system of tax incentives for property owners who use their land in conformance with the plan and tax penalties for nonconforming land uses.

Montana has come far in the decade since the passage of the Planning and Economic Development Act. Today, as a result of the support and assistance of state government and the interest of local officials and citizens concerned about their communities, 49 of Montana's 56 counties have created county planning boards. Of these, 28 county planning boards employ their own planning staff or share staff with other counties. Ten counties have completed comprehensive plans and eighteen additional counties are in the process of completing plans. In addition, over one hundred of Montana's 126 cities and towns either have their own planning board or are represented on a county planning board.

Current state policy in regard to planning was most recently enunciated by Governor Judge in a speech to the Montana Association of Planners on August 5, 1976:

Planning is no longer simply an avenue to better communities and more efficient use of our tax dollars. Today, planning is absolutely essential if we are to retain our basic quality of life in Montana.

The growing need for planning which is now being documented in Montana has caused a reexamination of the respective roles of the state and local government....What are the proper roles of the state government and our cities and counties in pursuit of our collective planning goals?

First and foremost, the role of the state must reflect a policy which emphasizes and seeks local control. Throughout my administration I have repeatedly called the 1970's the "Decade of Local Government." And I can assure you that this administration will continue to seek solutions to our planning problems through local government.

Inherent in our new state constitution and in the work of the State Commission on Local Government is the prevailing theme of local control and the strengthening of local government. In light of these things, it would be completely incongruous for state government to define its role in planning in such a way that local planning decisions were to be made in Helena.

However, the Governor went on to note that:

Planning for the future of Montana cannot rest solely with each unit of local government, no more than it can be the exclusive domain of state government. The state must continue to establish and implement policies which provide for planning and management of certain land use and development activities --activities which are clearly of such a nature that their impacts extend well beyond the boundaries of any single jurisdiction, and in fact, are often of such a magnitude that the impacts are of statewide concern.

Several such state policies presently exist in the form of legislation dealing with planning and management of flood prone areas, the shore lines of lakes and streams, the siting and reclamation of mines and the location of major industrial facilities. The Department of Community Affairs is presently investigating various approaches to coordinate local planning with the state's responsibility to plan for areas and activities of more than local concern.

Characteristics of Areas of State Concern Legislation

The investigation conducted by the Department revealed that since 1970 almost every state has either considered or adopted legislation which would involve state government more directly in land use planning. The trend developing nationwide indicates that local governments will continue to have the major responsibility for guiding and managing development with increasing participation by state government. Over one-fourth of the states have established programs which direct the identification, designation and management of specific geographic areas based on a range of criteria. These state programs differ in their characteristics according to the unique problems of each state and the issues which led to the development of the program. While there is no model format or standard approach for an areas of state concern process, the various state programs do have certain common features:

1. The programs are concerned with geographic areas rather than specific resources. By the mid-70's many states, including Montana had enacted environmental legislation which focused on single resources such as floodplains, lake shores, streams, and so on. It is the intent of an areas of state concern program to provide greater flexibility in the types of areas which may be managed in the public interest. Another distinction is that the concept of state significance and responsibility includes areas of social importance, not just environmental significance. H.B. 770 incorporates the flexibility to protect a wide-range of areas and resources that the public considers important including Blue Ribbon trout streams, elk winter range, important historic sites, or communities which will be impacted by major mining activity.
2. Areas of state concern programs emphasize anticipation of problems rather than reaction to them. Their intent is to recognize and deal with problems before they occur or at an early stage, rather than to attempt to alleviate negative development impacts after they have happened.
3. Areas of state concern programs incorporate an open and systematic decision-making process which generally includes three major steps: nomination, designation and management. Deciding what constitutes state significance for a specific area cannot be an exact science. Because it is not possible to establish precise criteria for identifying areas of state concern these programs place strong emphasis on

public initiative and discussion. Similarly, the determination of goals and management techniques for an area of state concern may involve subjective considerations and therefore requires an open political process and public discussion to establish a consensus.

4. Areas of state concern programs are management oriented and focus on implementation and results. The ultimate goal of a planning program for an area of state concern is usually to direct development in the area in order to protect the important qualities, values or features found in the area.
5. There is substantial variation among the states in the role that state government plays and the degree of state authority in the process, however, the most common feature of areas of state concern programs is the recognition of the important role of local government in management. While state agencies are frequently involved in the design of the management program for an area of state concern, in most states local governments are responsible for program implementation and administration of any land use controls. This common feature in the various state programs derives from (1) the strong and widespread interest nationwide in retaining local control over land use, (2) the recognition that the majority of land use decisions are primarily local in nature and therefore should be the responsibility of local units of government, and (3) the belief that local government is more sensitive to local conditions and

is in touch with the individual interests of local land owners.

The Areas of State Concern Act, Its Advantages for Montana

The process proposed by H.B. 770 would significantly improve Montana's present structure for land use planning and management.

-- Few of Montana's local governments have the financial or technical resources to develop strong and effective programs for the management of large-scale problems, and in particular those problems resulting from rapid growth due to natural resource development such as mining. The availability of state financial and technical assistance would also spread the cost of planning more equitably over the state population when planning is needed for an area of greater than local concern, such as a Blue Ribbon trout stream or a major recreation area.

-- The public attention focused on an area through its nomination as an area of state concern would generate increased public support for protection and management of the area by publicizing the unique or important qualities it possesses. The availability of financial and technical assistance would also encourage local governments to initiate planning and management of land use and development where they are not now doing so.

-- The approach proposed by H.B. 770 would make it possible to limit state interest and action to matters which actually are of state significance or where the state should share the responsibility for dealing with the problem. For a state like Montana which

essentially operates its land use program through local government, it offers a method of ensuring that many valid state interests are recognized, by providing a "sorting procedure" which would allow the state to concentrate on the relatively small proportion of matters where there is a legitimate non-local concern.

-- H.B. 770 would provide a means for the state to recognize and implement its interest in land use and management of natural resources without diminishing local government authority over land use. Under H.B. 770 local government would participate in drawing up a management plan, and would assume responsibility for protecting the area and determining that it is developed in accordance with the objectives of the plan. In effect, the powers of local government would be supported by state policy. Although the basic tool of management would continue to be regulation by local government, the result would reflect a greater public interest because the area has been designated an area of state concern. The practical result of the designation of an area of state concern would be increased local government authority in dealing with state agencies and greater influence in dealing with Federal agencies.

-- The state's interest in land use planning must be exercised without duplicating local actions at another level, without increasing the costs of development, and without creating a time-consuming and inefficient procedure for making land use decisions. The process proposed in H.B. 770 would not establish another layer of government review which would add to delay in decision-making but instead utilizes the legal structure already established for land use planning at the local level. Further, by making maximum use of existing

agency staff and expertise it would avoid building a bureaucracy at the state level which might duplicate the work of local planning agencies.

-- One of the desirable features of H.B. 770 is its potential for building upon and enhancing the existing system of land use management by encouraging better coordination and communication among local, state and Federal agencies. An areas of state concern process, because it is a new form of resource management, would inevitably interact with existing programs. For example, local comprehensive planning could help identify areas which should be considered for nomination as areas of state concern. Existing local and state agencies could provide much of the technical knowledge and information needed for consideration of a nomination and for the development of a management program. Manpower, field experience, public contacts, and other resources of local and state agencies could be tapped to support the process. Conversely, the areas of state concern program could provide coordination and a focus for the efforts of various state agencies involved in single-purpose resource management programs. The designation of an area of state concern could provide an umbrella under which a number of different agencies could coordinate their efforts in a particular area. For states such as Montana, with one-third of its land under Federal ownership or control, it is especially important that local and state planning interrelate with Federal planning and management efforts on public lands. The fact that an area has been officially designated as an area of state concern may increase the influence that both local and state governments would have in coordinating policy, planning and management with Federal

agencies having management responsibility for adjacent public lands.

-- A common indictment of planning is "the plan that sits on the shelf and gathers dust." Unlike any other existing program for local planning assistance, the procedure established in H.B. 770 would assure plan implementation and follow through. Although it would be very unlikely that it would be used, the state back-up role provided in the act would assure that, where the state has designated an area and committed financial and technical assistance, the plan would be completed and implemented.

H.B. 770 Compared to Previous Bills

This is not the first time that Montana's Legislature has been asked to consider this type of legislation. Governor Judge called for the establishment of a process for designating "areas of state or regional significance...requiring proper planning or development control" in his first State of the State Address in January, 1973. In 1975, the Montana Land Use Policy Study conducted by the Environmental Quality Council recommended "that the legislature consider legislation that would establish a state land use commission and specify procedures whereby citizens, local governing bodies and the state can...identify, designate and manage areas of state concern...."

H.B. 770 attempts to respond to the criticisms leveled at previous areas of state concern bills. The major differences between H.B. 770 and previous legislation are as follows:

-- The criteria for designation contained in past legislation were subject to criticism because of their generality. The

criteria contained in H.B. 770 have been limited to those criteria most appropriate to Montana's present needs and have been made as objective as possible. Two of the criteria would utilize existing systems for classifying streams and historical and archeological sites according to their state and national significance. The criterion based on wildlife habitat would be restricted by the requirement that the Director of the Department of Fish and Game confirm that the habitat is necessary to sustain a wildlife population of state significance. Previous legislation also provided that the criteria would be supplemented by administrative rule. The criteria contained in H.B. 770 would be the only criteria used and would not be subject to revision except by legislative action.

- Many opponents of previous areas of state concern legislation feared that the bills would result in regulation of or interference with agricultural production or other development of natural resources. H.B. 770 would preclude the regulation of mining, forestry or agricultural practices unless they would seriously endanger the health or safety of area residents. This concept has been incorporated in Montana planning law for twenty years and is consistent with both the existing enabling legislation for local planning and the new planning code proposed by the State Commission on Local Government.
- Previous legislation allowed "any person" to submit a nomination for an area of state concern. Many legislators and local officials believed that nomination should be

limited to governing bodies or their constituents. H.B. 770 limits nomination to governing bodies or to citizen petition by qualified electors residing in the county in which the nominated area lies.

- Past areas of state concern bills were criticized because of the amount of state control reflected in them and the discretion permitted the administering agency. The process proposed by H.B. 770 emphasizes a sharing of responsibility and gives the local governing body a greatly expanded role in the planning and management of areas of state concern. Once an area has been designated by the Commission the local government would appoint four representatives to meet with the Commission as a Joint Commission. When the Joint Commission is meeting the Commission Chairman would vote only in the case of a tie, thus, the Joint Commission would represent a balance between state and local interests in the development of the planning and management program. The Director of the Department of Community Affairs would serve as Chairman of the Commission in order to ensure coordination between the Commission and the Department. Under H.B. 770 the Department would serve in an advisory capacity and as staff for the Commission and any Joint Commission. The Department would have no authority to take any action not permitted or ordered by the Commission or any Joint Commission.
- H.B. 770 would integrate the state's policy for assisting impacted communities with the areas of state concern con-

cept. State impact assistance for planning is presently available only for those impact areas where the major development is coal related. Potash development in northeast Montana, copper mining in Lincoln County, and platinum, palladium and chromium development in the Stillwater complex are examples of development that falls outside the existing state system for providing planning assistance to impacted areas. The criteria contained in H.B. 770 would allow state support for planning in such areas.

- Previous areas of state concern legislation contained set formulas for allocating funds to local governments for the development of plans and management techniques. This approach was criticized because the amount of funding necessary may vary considerably, based on the scale and complexity of the problems encountered. In order to provide greater flexibility H.B. 770 would authorize the Commission to allocate funds on the basis of need.

Conclusion

The citizens of Montana often have an interest in land use decisions in which they have no voice because these decisions are made by separate units of local government. The approach offered by H.B. 770 would provide a forum for focusing the state's interests and actions on land use problems while utilizing local government and existing procedures to the maximum extent possible. The intent of H.B. 770 is to improve and supplement Montana's existing system for land use planning, not to replace it. H.B. 770 would create a pro-

cess which would allow a partnership between the state and local government, a partnership through which the state and local governments could jointly and cooperatively identify areas of mutual concern and share the responsibility for planning and management in a way consistent with the interests of the state and the local community.

House Bill No. 770

INTRODUCED BY

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A COMMISSION TO DESIGNATE AREAS OF STATE CONCERN; ESTABLISHING CRITERIA FOR DESIGNATION OF SUCH AREAS; SETTING FORTH PROCEDURES FOR NOMINATION AND DESIGNATION OF SUCH AREAS; AUTHORIZING JOINT APPROVAL OF PLANNING GUIDELINES, PLANS, AND MANAGEMENT TECHNIQUES WITHIN THOSE AREAS BY THE COMMISSION AND LOCAL REPRESENTATIVES; AND PROVIDING FINANCIAL AND TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS TO PLAN FOR AND MANAGE THOSE AREAS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act shall be known and may be cited as the "Areas of State Concern Act".

Section 2. Statement of purpose. The legislature finds that in order to maintain and improve a clean and beautiful environment for present and future generations in Montana and in order to protect the health, welfare, safety, and quality of life of the residents of this state, it is necessary to adequately plan for and manage growth and development within the state. The legislature further finds that while local government has the primary authority and

responsibility to plan for and manage growth and development within its jurisdiction, the state must share that responsibility when planning and management are needed for areas of greater than local concern because of their cultural or natural qualities and for areas subject to major growth due to resource development. It is the purpose of this act to establish a process by which areas of concern to all Montanans may be identified and by which the responsibility for the management and planning of growth and development in such areas may be shared by both state and local governments.

Section 3. Definitions. As used in this act, unless the context requires otherwise, the following definitions apply:

- (1) "Area of state concern" means an area designated as provided in this act.
- (2) "Commission" means the commission for areas of state concern as established by this act.
- (3) "Department" means the department of community affairs.
- (4) "Governing body" means the governing body of a county or incorporated city or town.
- (5) "Joint commission" means the commission when acting jointly with the representatives appointed by the local governing body or bodies for an area of state concern.

1 Section 4. Commission for areas of state concern.
 2 There is created a commission for areas of state concern,
 3 which shall be attached to the department of community
 4 affairs for administrative purposes only as provided in
 5 section 82A-108. The commission shall be considered a
 6 quasi-judicial board subject to section 82A-112 except as
 7 follows:

8 (1) The commission shall consist of the director of
 9 the department, who shall serve as chairman, and four
 10 citizen members.

11 (2) The four citizen members of the commission shall
 12 be selected by the governor to represent as broadly as
 13 possible the geographic areas of the state. In making
 14 appointments, the governor shall take into consideration the
 15 representation of local government, agricultural, economic,
 16 and conservation interests.

17 (3) The commission shall establish bylaws for its
 18 organization and procedures.

19 (4) The initial citizen members of the commission
 20 shall be appointed within 90 days of the effective date of
 21 this act.

22 Section 5. Criteria for designation of areas of state
 23 concern. To qualify for designation as an area of state
 24 concern, the commission must find that the area would be
 25 substantially harmed in the absence of a concerted planning

1 and management program. Such areas must be one of the
 2 following:

3 (1) an area that contains irreplaceable natural or
 4 cultural characteristics that are of major concern to the
 5 state and contains:

6 (a) habitat which is necessary to sustain fish or
 7 wildlife populations of state significance;

8 (b) a stream designated by the Montana fish and game
 9 commission as a class I, blue ribbon or class II, red
 10 ribbon stream;

11 (c) a major recreational area of state significance
 12 containing a publicly owned recreation site or facility; or
 13 (d) an historic or archaeological site or district
 14 listed or eligible for listing in the national or state
 15 registers of historic places.

16 (2) an area where state policy permits or encourages
 17 major resource development and where planning or management
 18 could mitigate undesirable community or environmental
 19 impacts due to haphazard growth if the major resource
 20 development would:

21 (a) require a construction or operating permit from a
 22 state agency; and

23 (b) create direct employment for 100 or more persons.

24 Section 6. Nomination information requirements. By
 25 December 31, 1977, the department shall propose and the

1 commission shall adopt, with or without notification,
 2 requirements for information that must be submitted with the
 3 nomination of an area for designation as an area of state
 4 concern. The required information shall at least include:

5 (1) a description of the area and a map of its
 6 boundaries;

7 (2) a statement of reasons for designating the area;

8 (3) identification of land ownership in the area and
 9 the governing body or bodies having jurisdiction over the
 10 nominated area;

11 (4) a description of land use and existing plans or
 12 regulations affecting land use in the area;

13 (5) a description of techniques or programs which
 14 could be used to ensure proper management of the area; and

15 (6) a letter confirming the area's eligibility from:

16 (a) the director of the department of fish and game if
 17 the criteria used for nomination is fish or wildlife habitat
 18 or class I or II streams; or

19 (b) the director of the Montana Historical Society if
 20 the criteria used for nomination is that the area is
 21 historical or contains archeological sites or districts.

22 Section 7. Nomination procedures. (1) The nomination
 23 of an area of state concern may be made by a governing body
 24 or by citizen petition. In the case of a citizen petition,
 25 the petition shall bear the signatures of at least 25

1 qualified electors residing in the county in which the
 2 nominated area lies.

3 (2) The nomination shall be submitted to the governing
 4 body having jurisdiction over the geographic area proposed
 5 for designation.

6 (3) If the nomination contains all of the required
 7 information, it shall be officially accepted by the
 8 governing body at its next regular meeting.

9 (4) Within 5 days of accepting the nomination, the
 10 governing body shall send a copy of the required nomination
 11 information to the department and to appropriate local
 12 agencies, including any local planning agency, for their
 13 review. The department shall distribute copies of the
 14 nomination information to appropriate state agencies. The
 15 state and local agencies, except any local planning agency,
 16 shall forward any comments to the governing body and to any
 17 local planning agency within 30 days after receiving the
 18 nomination information.

19 (5) Within 45 days after accepting the nomination, the
 20 governing body shall hold a public hearing on the nomination
 21 in accordance with [section 16 of this act]. The nominators
 22 shall reimburse the governing body or bodies for actual
 23 costs incurred in providing notice of the hearing.

24 (f) Where a local planning agency has been
 25 established, it shall within 10 days after the public

1 hearing, review any comments by state and local agencies,
 2 the record of the public hearing, and any other pertinent
 3 information and submit to the governing body in writing its
 4 recommendation regarding designation of the area.

5 (7) Within 30 days after the public hearing, the
 6 governing body shall recommend to the commission either
 7 approval or denial of designation of the nominated area as
 8 an area of state concern. It shall submit to the commission
 9 written findings and recommendations concerning designation
 10 of the area, along with comments submitted by state and
 11 local agencies, the record of the public hearing, estimated
 12 cost of the planning process, and any other pertinent
 13 information.

14 (8) If nominations are received for areas which are
 15 adjacent or overlapping, the commission may grant the
 16 governing body an appropriate extension of time to
 17 coordinate the nomination process.

18 Section 8. Nominations incorporating more than one
 19 jurisdictional area. Nominations in which the total
 20 geographic area proposed for designation includes more than
 21 one jurisdiction may be made and shall be processed in
 22 accordance with [section 7 of this act], except:

23 (1) nominations by citizen petition shall be made by
 24 at least 25 qualified electors of each jurisdiction in which
 25 the nominated area lies;

1 (2) nominations and required nomination information
 2 shall be submitted to each governing body having
 3 jurisdiction over any of the geographic areas, proposed for
 4 designation;

5 (3) within 30 days after the last public hearing held
 6 by any of the governing bodies to which the same nomination
 7 has been submitted, representatives of all such governing
 8 bodies shall meet and jointly recommend to the commission
 9 either approval or denial of designation of the nominated
 10 area of state concern along with the written findings and
 11 other information required by [section 7]. If a joint
 12 recommendation cannot be reached, separate recommendations
 13 shall be submitted to the commission, along with the written
 14 findings and other information required by [section 7].

15 Section 9. Designation of an area of state concern.
 16 (1) Within 60 days after receiving the recommendation for
 17 approval or denial from the governing body or bodies, the
 18 commission shall review the written findings,
 19 recommendations, record of the hearing and other information
 20 and either:

21 (a) designate the area, as proposed or with
 22 modifications, as an area of state concern; or

23 (b) deny designation and notify the governing body or
 24 bodies and nominators of the reasons for denial.

25 (2) Before reaching a decision regarding designation,

1 the commission may hold public hearings within the proposed
2 area in accordance with [section 16]. All such hearings
3 held by the commission shall be held at a location selected
4 to facilitate the attendance of local residents who may be
5 affected by actions resulting from the hearing.

6 (3) The order designating an area of state concern
7 shall include:

8 (a) a description of the area and a map of its
9 boundaries;

10 (b) a statement of the reasons for designating the
11 area; and

12 (c) any additional information relevant to the
13 designation of the area.

14 (4) If the proposed designation is denied by the
15 commission, the area or any portion thereof may not be
16 redesignated for a period of at least 1 year after denial.

17 Section 10. Development of planning guidelines for an
18 area of state concern. (1) When an area is designated by
19 the commission as an area of state concern, the governing
20 body or bodies having jurisdiction over the area shall
21 within 30 days of designation appoint a total of four
22 representatives to meet with the commission as a joint
23 commission; except when the area of state concern includes
24 more than one jurisdictional area, two members shall be
25 appointed from each jurisdiction. The local representatives

1 shall have the same voting rights as members of the
2 commission when meeting as a joint commission. The local
3 representatives shall be compensated for their expenses in
4 the same manner as commission members. When the commission
5 meets with local representatives as a joint commission, the
6 director of the department may vote only in the case of a
7 tie.

8 (2) Within 90 days after the designation of an area of
9 state concern, the department shall develop and the joint
10 commission shall approve, with or without modifications,
11 guidelines for the designated area to be used by the
12 governing body or bodies in developing a plan and management
13 techniques for the area. In developing and approving
14 guidelines for the designated area, the department and the
15 joint commission shall consult with and seek the advice of
16 state agencies and local agencies and officials having
17 jurisdiction within the area, including but not limited to
18 governing bodies and planning agencies.

19 (3) The joint commission may modify the guidelines to
20 reflect any new information or changed circumstances.

21 Section 11. Multijurisdictional planning
22 organizations. If an area of state concern involves more
23 than one jurisdiction, the governing bodies having
24 jurisdiction over the area may form or utilize a single
25 multijurisdictional organization for the purpose of

1 coordinating the planning and development of a plan and
2 management techniques for the designated area.

3 Section 12. Financial and technical assistance to
4 governing bodies and multijurisdictional planning
5 organizations. (1) At the time planning guidelines are
6 approved, the commission shall allocate funds for the
7 development of plans and regulations for the designated
8 area. The commission shall contract with the governing body
9 or multijurisdictional organization for the expenditure of
10 funds and work to be performed consistent with the
11 guidelines for the area. The department shall monitor use
12 of the funds and periodically report to the joint
13 commission.

14 (2) The department and appropriate state agencies
15 shall, upon request, provide the governing body and
16 multijurisdictional organization with all pertinent
17 information available and all technical assistance necessary
18 in regard to an area of state concern.

19 (3) With commission approval, the governing body,
20 multijurisdictional organization, or department may enter
21 into contracts with public and private agencies in order to
22 carry out the objectives of this act.

23 Section 13. Development and implementation of a plan
24 for an area of state concern. (1) Within 12 months after
25 financial assistance has been granted, the governing body or

1 multijurisdictional organization, in cooperation with any
2 local planning agencies, shall develop a plan and management
3 techniques for the designated area. The plan and management
4 techniques may include but are not limited to:

5 (a) cooperative agreements with state or federal
6 agencies;

7 (b) acquisition of conservation easement;

8 (c) capital improvements programming;

9 (d) land use regulations and development standards;
10 and

11 (e) coordination with state agencies for acquisition
12 of parks, recreation areas, historic sites, and wildlife
13 habitat.

14 (2) After holding a public hearing in conformance with
15 the procedures contained in [section 16], the governing body
16 or bodies shall transmit the proposed plan and management
17 techniques and the record of the hearing to the department.

18 (3) Within 60 days after the proposed plan and
19 management techniques have been received by the department:

20 (a) the department shall review them to determine
21 their conformance with the guidelines for the area and
22 forward them and the record of the hearing to the joint
23 commission with any comments and suggested modifications;
24 and

25 (b) the joint commission shall accept the proposed

1 plan and management techniques if they confers to the
2 guidelines or return them to the governing body or
3 multi-jurisdictional organization for revision.

4 (4) Within 90 days of acceptance by the joint
5 commission, the governing body or bodies having jurisdiction
6 over any portion of the area of state concern shall:

7 (a) adopt the plan;

8 (b) whenever the plan requires implementation by
9 regulation, adopt and enforce the regulation pursuant to
10 Title 11, chapters 27 or 38, or Title 16, chapters 41 or 47,
11 except that 16-4705(6) does not apply in an area designated
12 as an area of state concern; and

13 (c) whenever the plan requires implementation by
14 nonregulatory management techniques, such as capital
15 improvement programs and conservation easements, initiate
16 action to ensure implementation.

17 (5) If a governing body has not completed a plan or
18 proposed management techniques for an area within the time
19 limit established by this section, the joint commission
20 shall direct the department to prepare a plan and management
21 techniques for the area in conformance with the guidelines
22 approved by the joint commission. The plan and any
23 regulation shall be promulgated by the joint commission,
24 with or without modification, and enforced by the governing
25 body. The plan or any regulations promulgated by the joint

1 commission may be revised by the local governing body with
2 the concurrence of the joint commission.

3 (6) If unusual circumstances preclude the completion,
4 review, adoption, or revision of the plan or management
5 techniques in the time limit established by this section,
6 the joint commission may grant an appropriate extension of
7 time to the governing body.

8 (7) Whenever existing plans or regulations conflict
9 with those adopted under this act, those adopted under this
10 act shall supersede.

11 (8) No state or local agency may initiate a
12 development or grant a permit for development which would
13 conflict with any regulations adopted under this act.

14 (9) The governing body or bodies shall periodically
15 review the plan or management techniques for the area and at
16 any time may revise them if the revision is consistent with
17 the guidelines for the area and if the joint commission
18 concurs.

19 (10) If the plan and management techniques approved by
20 the commission and adopted by the governing body or bodies
21 are not enforced by the governing body or bodies, the
22 commission may bring an action in the district court of the
23 county in which the area of state concern lies.

24 Section 14. Interim controls. (1) If the governing
25 body has recommended designation, it may adopt and enforce

1 interim land use controls for the nominated area after
2 holding a public hearing in accordance with [section 16].
3 Interim controls shall be terminated upon denial of
4 designation or upon adoption of plans and management
5 techniques pursuant to [section 13].

6 (2) When the commission designates an area of state
7 concern, the joint commission may require that the governing
8 body or bodies adopt and enforce interim controls. Such
9 controls shall as closely as possible reflect the reasons
10 for designating the area given by the commission in its
11 designation order. The controls shall be terminated upon
12 adoption of a plan and management techniques for the area
13 according to [section 13].

14 Section 15. Termination of designation of areas of
15 state concern. (1) A petition for termination of
16 designation of all or parts of an area of state concern may
17 be made by any of the parties eligible to nominate such an
18 area under [sections 7 and 8].

19 (2) The petition for termination shall be submitted to
20 the governing body or bodies having jurisdiction in the
21 area of state concern but in no event may the petition be
22 submitted until 1 year after adoption of a plan and
23 management techniques for the area according to [section
24 13].

25 (3) The petition for termination shall at least

1 contain:
2 (a) a description of the area and a map of its
3 boundaries; and
4 (b) a statement of the reasons for termination of
5 designation.

6 (4) The governing body shall officially accept any
7 petition with the required information at its next regular
8 meeting.

9 (5) Within 5 days after accepting the petition for
10 termination, the governing body shall send a copy of the
11 petition to the department and to appropriate local
12 agencies, including any local planning agency, for their
13 review. The department shall distribute copies of the
14 petition to appropriate state agencies. The state and local
15 agencies, except any local planning agency, shall forward
16 any comments to the governing body and to any local planning
17 agency within 30 days after receiving the petition.

18 (6) Within 45 days after accepting that petition, the
19 governing body shall hold a public hearing on the petition
20 in accordance with [section 16].

21 (7) Whenever a local planning agency has been
22 established, it shall, within 10 days after the public
23 meeting, review any comments by state and local agencies,
24 the record of the public hearing, and any other pertinent
25 information and submit to the governing body in writing its

1 recommendation regarding termination of the area.

2 (8) Within 30 days after the public hearing, the
3 governing body shall recommend to the commission either
4 approval or denial of the petition to terminate designation
5 of an area of state concern. It shall submit to the
6 commission written findings and recommendations concerning
7 termination of designation.

8 (9) Within 60 days after receiving the recommendation
9 for approval or denial of the petition to terminate from
10 the governing body or bodies having jurisdiction over the
11 area, the commission shall review the written findings,
12 recommendations, and other information and either:

13 (a) order the termination of the designation of the
14 area of state concern and in the order state the reasons for
15 the termination; or

16 (b) deny the petition to terminate and notify the
17 governing body or bodies and the nominators of the reasons
18 for denial.

19 (10) Before reaching a decision regarding termination,
20 the commission may hold public hearings within the proposed
21 area in accordance with [section 16]. All such hearings
22 held by the commission shall be held at a location or
23 locations selected to facilitate the attendance of local
24 residents who may be affected by actions resulting from the
25 hearing.

1 (11) If the recommendation for termination is denied
2 by the commission, the area or any portion thereof may not
3 be subject to petition for termination for a period of at
4 least 1 year after its denial.

5 Section 16. Public hearings. (1) When a public
6 hearing is held in accordance with this act, notice shall be
7 published in a newspaper of general circulation in the
8 county affected, at least two times with at least 7 days
9 separating each publication. The first publication shall be
10 no more than 21 days prior to the hearing and the last no
11 less than 3 days prior to the hearing.

12 (2) The notice shall:

13 (a) indicate the date, time, and place of the hearing;

14 (b) state the purpose of the hearing and the general
15 location of the proposed area of state concern; and

16 (c) specify the public official from whom additional
17 information can be obtained.

18 (3) The department shall provide for a mechanical or
19 written record of any hearing held under this act.

20 Section 17. Protection of property rights. (1) No
21 regulation adopted under this act may prevent the complete
22 use, development, or recovery of mineral, forest, or
23 agricultural resources unless the use, development, or
24 recovery is demonstrated to have the potential of seriously
25 endangering the health or safety of residents.

1 (2) No use of land or structures which was lawful when
2 the use was initiated or when a legal enforceable right to
3 carry on the use was acquired may be prohibited by any
4 regulation by governing bodies adopted or promulgated by the
5 joint commission under this act.

6 Section 18. Severability. If a part of this act is
7 invalid, all valid parts that are severable from the invalid
8 part remain in effect. If a part of this act is invalid in
9 one or more of its applications, the part remains in effect
10 in all valid applications that are severable from the
11 invalid applications.

-End-

SUMMARY OF HOUSE BILL 770

"THE AREAS OF STATE CONCERN ACT"

With Comments Prepared by the Division of Planning
Department of Community Affairs

Section 1. Short title. Declares short title of bill - "Areas of State Concern Act."

Section 2. Statement of purpose. Declares that the state should share the responsibility when planning is needed for geographic areas having unique or important qualities and community impacts resulting from development of the state's resources; and proclaims that it is the legislative purpose to establish a cooperative process for identifying these areas and facilitating local efforts to plan for and manage them.

Section 3. Definitions. Defines significant terms used in the bill.

Section 4. Commission for Areas of State Concern. Creates a five-member Commission to be appointed by the governor and attached administratively to the Department of Community Affairs.

Comment:

In order to assure coordination between the Department and the Commission the Director of the Department of Community Affairs would serve as chairman of the Commission.

Section 5. Criteria for designation of areas of state concern. Establishes the criteria to be used by a local governing body or citizen

group in nominating an area and by the Commission in determining whether an area should be designated as an area of state concern.

Comment:

In an effort to make the criteria section as objective as possible two of the criteria would utilize existing systems for classifying streams and historical and archaeological sites according to their state and national significance. The criterion based on wildlife habitat is restricted by the requirement that the Director of the Department of Fish and Game confirm that the habitat is necessary to sustain a wildlife population of state significance.

Section 6. Nomination information requirements. Requires the Department to propose and the Commission to adopt, by December 31, 1977, requirements for the information that must be submitted with a nomination for an area of state concern.

Comment:

No nomination for an area of state concern could be made until the Commission has adopted requirements for information to be submitted with a nomination.

Section 7. Nomination procedures. Limits nomination of an area of state concern to either the governing body of the county or to citizen petition by 25 electors residing in the county in which the proposed area lies; provides for submission to the governing body having jurisdiction; provides for review of a nomination by interested local and state agencies and the local planning board; requires the governing body to hold a public hearing on the nomination; provides that the nominators must reimburse the governing body for costs of providing public notice; and requires the governing body to recommend

either approval or denial of designation of the area to the Commission.

Comment:

Nomination by petition would be limited to residents of a county because the staff of the Montana Association of Counties (MAC) and county planners believed that county commissioners would want the nomination to come from their own constituency, not from outside individuals or organizations. The MAC staff believed that the nominators should be responsible for the costs of providing public notice in order to discourage frivolous nominations.

To justify the designation of an area the nominators must provide a statement of the reasons for designating the area. By answering why it is important to manage the area, the nominators could identify many of the benefits which would result from its designation. The nominated area would be analyzed by local and state agencies and recommendations would be made concerning designation and management of the area. The review of a nominated area should include consideration of the immediacy of the threat to the area or resource as well as a review of the capability of the state and local government to manage the area or problem under existing programs.

The governing body is required to recommend to the Commission either approval or denial of the designation. The governing body may recommend denial because it believes that the problem can be resolved through its own planning program without state financial assistance or involvement or because it believes that the nomination does not meet the criteria established in the law.

Section 8. Nominations incorporating more than one jurisdictional area. Establishes procedures for nomination of an area of state concern which involves more than a single jurisdiction and provides for a joint recommendation to the Commission by the governing bodies involved.

Section 9. Designation of an area of state concern. Provides that within sixty days of receiving the governing body's recommendation

and after reviewing the record of the local public hearing and the recommendations of the governing body, and after determining whether the nomination meets the criteria set out in the law, the Commission must approve or deny designation of the nominated area of state concern; authorizes the Commission to hold public hearings in the area to gather additional information before making a decision on designation; and prohibits renomination of that area for one year if the designation is denied.

Comment:

The Commission would be responsible for providing a comprehensive, statewide perspective for consideration of a nomination, and determining whether the nominated area meets the criteria contained in the act. Because funding would be limited the immediacy of the need for designation may be a major consideration in determining whether an area should be designated. Designation would be an official act that would establish the geographic boundaries of the area and would describe and limit the state's interest in the area. The area would then be officially recognized by the state and its management program would be supported by state policy.

Section 10. Development of planning guidelines for an area of state concern. Requires that if the designation is approved, the governing body must appoint four local representatives to meet with the Commission as a joint commission for the area of state concern; provides that where more than a single jurisdiction is involved, two local representatives shall be appointed for each jurisdiction; provides that the chairman may vote only in the case of a tie; provides that within ninety days of an area's designation the Department must develop, and the joint commission must approve, guidelines to be used by the governing body in developing a plan and management techniques for the area of state concern; and allows the joint com-

mission to revise the guidelines based on new information or changed circumstances.

Comment:

Most county commissioners would probably want to appoint themselves as local representatives, with the chairman of the county planning board possibly as the fourth representative. In this way the commissioners could maintain more of their authority in tailoring an appropriate management program for the area. The four local representatives sitting on the joint commission would serve as advocates for local interests in the preparation of planning guidelines and the Commission members would be responsible for assuring that statewide interests are considered.

The planning guidelines would provide direction for the development of the plan for the area and would set out the management techniques which should be used in managing the use and development of the area. The guidelines would most likely include a description of the types of plans which should be drawn up for a specific area and an outline of the procedures to be used to develop the plan and management techniques. The guidelines would result from a synthesis of the technical recommendations provided by the Department of Community Affairs with the needs and desires of the local government, landowners and the public. The joint commission would mediate the discussion necessary for definition of the management program and would determine its final content.

The question of whether long-term or short-term management techniques should be used for the area would be related to the original reasons for designation. For areas designated on the basis of environmental considerations a combination of development standards, based on the capability of the resources to support development, and conventional regulatory techniques would probably offer the best method of management. By identifying the qualities which make the area of state concern it should be possible to determine particular land uses which might disturb those qualities and which must be prohibited, other uses which might be compatible if they meet specific performance criteria, and those uses which are compatible with the area. For areas designated on the basis of historic or archeological sites or wildlife habitat, acquisition might be the only way to assure preservation. Purchase of these areas could possibly be coordinated with the state's existing acquisition program for historic sites, state parks, recreation areas and wildlife habitat. For areas designated on the basis of community impacts due to resource development, planning and programming of public facilities and utilities may be the most

effective means of managing growth. In other cases the most appropriate management technique may include cooperative state agency agreements or special arrangements with Federal agencies. The best management framework for any area would most likely be a combination of those techniques best suited to the particular situation.

This section would permit modification of the planning guidelines by the joint commission. A plan for an area of state concern must be flexible enough to allow changes which would make the plan easier to administer and more effective, especially those changes which could be done without increases in program costs.

Section 11. Multi-jurisdictional planning organizations. Authorizes use or formation of a multi-jurisdictional organization to coordinate planning where an area of state concern involves more than a single jurisdiction.

Section 12. Financial and technical assistance to governing bodies and multi-jurisdictional organizations. Requires the Commission to allocate funds for development of plans and regulations at the time that the planning guidelines are approved; requires the Commission to contract with the governing body or multi-jurisdictional planning organization for expenditure of the funds and completion of the work to be performed; requires the Department to monitor the use of the funds and the progress in completing the planning program and to report periodically to the joint commission; and requires state agencies to provide technical assistance and information to the governing body or multi-jurisdictional planning organization.

Comment :

The amount of funds necessary for the development of a plan and management techniques for an area of state concern may vary considerably depending upon the scale and complexity of the problem. This section would provide the Commission

with the flexibility to deal with varying situations while still assuring accountability for the expenditure of funds. It would be the function of the Department and appropriate state agencies to provide technical information and assistance to the local government in developing the plan and management program.

Section 13. Development and implementation of a plan for an area of state concern. Requires the local governing body to develop a plan and management techniques for the designated area within twelve months after financial assistance has been granted by the Commission; requires joint commission review and approval of the plans and management techniques within sixty days; requires adoption of the plan and implementation of management techniques within ninety days after acceptance by the joint commission; provides that if a governing body has not developed plans and management techniques for an area within the specified time limits, the joint commission shall direct the Department to develop them for the area; requires that these plans and management techniques be implemented by the governing body according to existing law; provides that the governing body may revise promulgated plans or regulations with concurrence of the joint commission; and prohibits any state or local agency from initiating or permitting a development which conflicts with regulations adopted for the area of state concern.

Comment:

Land use regulations prepared under this act would be adopted under existing law, with the exception that the regulations would be exempt from a provision which prevents adoption of a regulation where 40% of the landowners in the area protest. It would be a completely incongruous result if a minority of landowners could overturn proper management of an area designated as an area of state concern.

In the event that a local government fails to develop a plan and management techniques for the area of state concern, the responsibility for development of the plan and promulgation of any necessary regulations would fall upon the Department of Community Affairs. The elements of any state-prepared plan would be the same as those called for in the contract with the local government and would have to be consistent with the guidelines for the area. This state back-up role is similar to that which already exists under the Floodway Management Act, the Subdivision and Platting Act and the Montana Economic Land Development Act.

Section 14. Interim controls. Authorizes a local governing body to adopt interim controls if it has recommended designation of an area; requires termination of those controls upon denial of designation by the Commission or upon adoption of plans and management techniques under this act; authorizes the joint commission to require a governing body to adopt interim controls for an area of state concern; and provides for termination of those controls upon adoption of a plan and management techniques under this act.

Comment:

In some cases an area may present a problem of such immediate concern that if regulation is delayed the possibility of seeing the area preserved or properly developed would be lost.

Section 15. Termination of designation of areas of state concern. Provides a procedure for terminating the designation of an area of state concern.

Comment:

The designation of an area as an area of state concern is not intended to be permanent. The basic criteria for designation is "That the area would be substantially harmed in the absence of a concerted planning and management program." When planning has been completed and a management program has been

implemented by a local government the Commission may consider terminating the designation. This procedure essentially parallels the procedure set out in Sections 7 and 9 for nomination and designation.

Section 16. Public hearings. Establishes requirements for public hearings held under this act and requires that the Department of Community Affairs provide a record of any hearing held under the act.

Comment:

The requirements for public hearings incorporate those procedures proposed in the new local government code prepared by the State Commission on Local Government.

The provision requiring recording of hearings by the Department was incorporated at the request of the Montana Association of Counties. Many counties do not have any equipment to assure even a taped record of a public hearing. This may be the only dependable means of assuring that the commission would have an accurate record of the local public hearing on which to base their decision to approve or reject a nomination.

Section 17. Protection of property rights. Prohibits any regulation under this act from interfering with the development or utilization of natural resources unless that development would seriously endanger the health or safety of area residents and guarantees the right to continue any use of land which was lawful when initiated or when a legally enforceable right to carry on the use was acquired.

Comment:

This section would preclude the regulation of mining, forestry or agricultural practices under this act unless those practices would directly threaten the public health or safety. This concept has been incorporated in Montana planning law for twenty years and is consistent with both the existing planning

enabling legislation and the new planning code proposed by the State Commission on Local Government. This section would also prevent any land use regulation adopted under the act from being enforced retroactively.

Section 18. Severability. If a part of this act is found to be unconstitutional or invalid in part, all valid parts what are severable from the invalid part remain in effect.

Minutes of
Montana House of Representatives
Natural Resources Committee
February 23, 1977

The Natural Resources Committee convened on February 23, 1977, at 7:35 a.m. in room 437 with Chairman Sheldon presiding and all members present.

Chairman Sheldon opened the meeting to a hearing on H.B. 770.

REP. HARPER, the bill's chief sponsor, said he sponsored the bill at the request of the Governor. The purpose of the bill is to provide a mechanism to designate natural and cultural areas that are a concern to the entire state. The bill sets up a commission and criteria. He stressed that property rights must be protected. He also mentioned this could be the ounce of prevention that could forestall the need of a pound of cure. With the massive development occurring in many of our counties, he felt this bill is badly needed.

ROBERT LOHN, Governor's Office, said the legislation was not an attempt to stop growth and spoke of the "very special jewels in our crown of beauty" which Montana should be designating and protecting. He said the proposed commission would have four members from the locality who would be sensitive and responsive to the needs of that area. The bill would make available to cities and counties the ability to get the state agencies to cooperate and will make available the special kind of expertise familiar with the mechanism of how to do what needs to be done. He said their purpose is not to block development consistent with the area, but to protect areas

special to our state like the blue ribbon trout streams.

HAL PRICE, Planning Division of the Department of Community Affairs, spoke for the bill. He presented two papers the department had prepared. One was "The Areas of State Concern Act" which he said they had prepared before drafting the bill. The other paper was a summary of House Bill 770. He said members of the staff were there to answer any questions.

JIM BOYER, Montana Association of Planners, spoke next in support. He said planners are behind this bill because of the rapid economic and population growth that has occurred in many areas, which has caused overloading of schools and public services and deterioration of social and physical environments. And, he felt this was just the tip of the iceberg because of the energy developments being experienced in the state. According to Boyer the need for intelligent planning had never been greater. He said we need to plan to prevent problems before they happen and not after the land use pattern is scattered and services planned haphazardly to provide for this pattern. Boyer said that the most effective planning is that which comes before the problem. He said many counties, unless they have coal tax money, do not have the finances to have a planning staff to interpret what is happening and to act. This bill would help resolve their problem as the state's expertise could be used. He had several amendments which would increase the number of people needed to designate a special area to 1% of the qualified electors. Boyer also called for local veto authority. He said since the local area must do the implementing, they must be behind it or the designation would just be a pile of papers.

AMENDMENTS TO THE INTRODUCED DRAFT OF H.B. 770 - RECOMMENDED BY THE
MONTANA ASSOCIATION OF PLANNERS

Amend Section 7, page 5, line 25 by striking the number "25" and inserting instead "1% of the ";

Amend Section 7, page 7, by striking all of the words in lines 5 through 13 and inserting instead "Within 30 days after the public hearing, the governing body shall either approve or reject the nomination for designation of the area as an area of state concern. If the governing body approves designation it shall submit to the commission written findings and recommendations for designation of the area, with or without modification, along with comments submitted by state and local agencies, the record of the public hearing, estimated cost of the planning process, and any other pertinent information. If the governing body rejects designation it shall notify the Commission and the nominators and state the reasons for rejection by the governing body. If the proposed designation is rejected, the area or any portion thereof may not be renominated for a period of at least 1 year after rejection."

Amend Section 8, page 7, line 24 by striking the number "25" and inserting instead "1% of the";

Amend Section 8, page 8, by striking all of the words in lines 8 through 14 and inserting instead "bodies shall meet and jointly approve or reject designation of the nominated area of state concern. If a joint decision cannot be reached, separate decisions shall be made by each governing body";

Amend Section 9, page 8, line 17 by striking the words "or denial";

Amend Section 14, page 15, line 4 by inserting after the word designation "by the Commission";

Amend Section 15, page 17, by striking all of the words in lines 3 through 7 and inserting instead "governing body shall either approve or reject the petition to terminate designation of an area of state concern. If the governing body approves termination it shall submit to the commission written findings and recommendations for termination of designation. If the governing body or bodies reject the petition for termination, the area or any portion thereof may not be subject to petition for termination for a period of at least 1 year after its denial."

Amend Section 15, page 17, line 9 by striking the words "or denial".

TOM KELLY, Land Use Planner for Stillwater County, spoke in support. He said they have a potential of 121,000 acres subdivided and with only one county planner they are in need of more expertise and assistance to handle this kind of community impact. He felt this bill provides an intelligent way to share responsibility for this kind of planning. He said Stillwater County does not want to stop development but just to minimize the adverse impacts. He said they support the amendments of the Montana Association of Planners.

ELLEN GARRITY, American Association of University Women:

The Montana Division of the American Association of University Women urges the passage of H.B. 770.

For the past several years members of our organization have advocated that the state of Montana develop a comprehensive land use program and adopt long range goals for management and planning for our state.

We ask the legislature to pass a strong law to protect the areas of concern as set forth in Section 5, subsections (1) and (2) of H.B. 770. With particular reference to Section 5, (2), it is our contention that the planning must be emphasized in those areas where major resource developments are proposed and that the system for such planning should be a system that is and has been tried, not one hastily devised after the fact and as a reaction to an immediate crisis. This bill would give the residents of the area and the people throughout the state the resources and TIME to make wise and considered choices rather than relying on stop gap measures as each crisis arises.

AAUW supports the proposed amendment of the Montana Association of Planners which changes the required number of electors to submit a nomination from 25 electors to 1% of the electors.

In the event the committee decides to insert the amendment proposed by the Montana Association of Planners regarding the local veto, we ask that a further amendment be made to the bill.

Amend Section 7, page 7, by inserting a new section (8) that would read as follows:

"The authority of a governing body to reject a nomination for designation shall be limited to a nomination where, in a written finding of fact, the governing body determines that either the area does not meet the criteria for designation or that proper planning and management of the area can be achieved through the existing local planning program."

Amend Section 7, page 7, line 14 by deleting the number "(8)" and inserting in place thereof the number "(9)".

These further amendments would strengthen the bill without jeopardizing the jurisdiction of local control over an area of concern.

BARBARA MARTIN, League of Women Voters:

The League of Women Voters supports the passage of House Bill 770 which is consistent with our stand on land use policies. This position favors compilation of a comprehensive resource inventory; setting priorities of growth and goals for the state with significant input from the citizens; coordinating state agency efforts with local agencies and government bodies.

Land is a limited commodity, and the pressures which are presently exerted upon it by population growth, development of resources, and recreation will intensify in the future. This makes it imperative that we institute policies now which will insure a land use program tailored to benefit the most people now and in the future.

This bill is particularly attractive to us in that its provisions cover -- in addition to the physical -- the social, economic, and historical aspects of our environment. We also feel that it is important that the residents of a potential area of state concern will be able to play an active role in the nomination, planning and management of these areas. A third feature is that it would be possible to make use of existing state and local agencies to implement the provisions of this bill. Finally, the funding and expertise of state agencies which the bill makes available to local governments will hopefully not only stimulate effective land use planning, but will also encourage communication and cooperation between all levels of government.

BOB KIESLING, Environmental Information Center, spoke next in support. He said he was in support for the reasons cited by the previous proponents. He said this is the third time this kind of legislation has been introduced and he felt that Representative Harper and DCA (Department of Community Affairs) had done an excellent job of working out the problems in previous legislation. He said while they don't feel this is the only answer, they do feel this kind of legislation is overdue.

CONRAD B. FREDRICKS, Sweet Grass County Preservation Association and Park County Legislative Association, was the first opponent speaker. He said this would impose another layer of planning in the state and also be a duplication of existing procedures. He didn't think local government should be forced into partnership with the state as this bill appears to do. He did feel it would take away some local control as it superimposed some state control

over local land planning. Fredricks said he supported the amendments proposed by the Montana Association of Planners.

TOM WINSOR, Montana Chamber of Commerce, spoke next in opposition. He said at the Land Use Conference in 1974 the overriding feeling was the need for local control. He also said if people's property rights are taken away they should be compensated in some way. He said, if done on state level, decisions will be made by appointed officials; on local level, by elected officials. Winsor said the bill should have a local veto provision. He said the Chamber of Commerce supports legislation that encourages good land use planning by using economic incentives such as the Montana Economic Land Development Act.

WARD SHANAHAN, Dreyer Bros., Inc.:

Dreyer Bros., Inc. opposes House Bill 770. The bill proposes to create a commission within the Department of Community Affairs which would have regulatory and zoning powers, separate and distinct from powers already vested in local governing bodies. The bill would authorize the DCA commission to act both in circumstances where fish, wildlife habitat and recreational areas might be affected without regulation and where any industrial development occurs within the state.

Significantly, the bill would authorize the DCA commission to ignore the recommendations and desires of local governing bodies, both as to whether the area should be regulated by the DCA and whether regulation should be terminated due to a change in circumstances.

Further, the bill would permit the DCA commission to impose general zoning requirements and development standards in an area and authorize the imposition of restrictive easements for an area, contrary or in addition to limitations already imposed by local planning and zoning boards.

For example, notwithstanding the degree of local planning and zoning undertaken by McCone County for the Circle West plant of Dreyer Bros., Inc., and despite the controls already imposed by the Major

Facility Siting Act, this bill would authorize the DCA commission to adopt higher or different zoning standards for the area, potentially blocking development otherwise approved on the county and state level.

Dreyer Bros., Inc. opposes House Bill 770.

LESTER H. LOBLE, II, Montana Dakota Utilities, spoke next in opposition. Loble said that the proponents hadn't cited any specific problems and that the bill was too open ended. He said on page 4, lines 16 to 23, where it talks about major resource development, it appears to have been taken from the Major Utility Siting Act. He spoke of people's rights to use their land as they wished.

PETER JACKSON, WETA, spoke in opposition. Jackson said his organization was created to get a balance on the environment and red tape. He said this bill was like the "glob" and would be a big pile of red tape. He said there is nothing in this bill that can't be accomplished by existing laws. He said the bill would allow the taking of property rights without compensation.

JOHN CLEMA, geologist from Missoula, representing self, opposed the bill. He felt the terms were nebulous and open to many different interpretations. He said section 17 is important to the development field and he said this bill would just add another layer of bureaucracy between them and the local people. Clema said the bill takes property without compensation.

BOB GANNON, Montana Power, spoke in opposition. He said most subjects had been covered. He said the bill doesn't add any provision to law that the local government can't already do -- just adds a superagency over the local planning group. He felt there should be a fiscal note connected with the bill as it will cost a

bundle. He said there is no assurance the land owner's wishes will be considered as the process begins without his being included. Gannon said the bill could be disastrously applied against a property owner's interest.

DON ALLEN, Montana Oil and Gas Association, spoke next in opposition. He said his main concern is something that could delay future oil and gas development. He asked who determines what is an irreplaceable cultural species; like dinosaurs--everything that is irreplaceable is not bad to have leave.

Also signing as opposing were: Laureen France, Montana Mining Association, and Tom Collins, Montana Association of Realtors.

In his rebuttal, Rep. Harper said the opponents do not like this kind of bill in any type or form. He said taking pieces out of context and attacking them is an old scare tactic. He stressed this is a local control bill and that the M.A.P. and A.A.U.W. amendments should be incorporated. He asked the committee members to recall problems mentioned by their constituents while they were on the campaign trail. He said they should forget about lobbyists and special interest groups. Harper said the bill posed no threat to private property or the major interests. He felt this bill gives a glimmer of hope that the wishes of their constituents will be taken into consideration.

During questions it was mentioned there is a grandperson clause protecting prior use if a lawful right. Mr. Lohn said the cost would be a total of \$150,000 for the biennium, which money is already budgeted.

Also signing was Clarice Beck, AAUW, in support; Spike and Barbara Van Cleve, representing the Sweet Grass County Preservation Association, in opposition.

In her written comments, Barbara Van Cleve said that, "Land use should be left in the hands of the owners, guided by local county boards." Spike Van Cleve described the bill in his written comments as "Too much power in too few hands."

Appendix D

Great Falls Morning Tribune

February 24, 1977

'Crown of jewels' measure doesn't glitter for everyone
Tribune Capitol Bureau

HELENA -- Montana has "particular jewels in our crown of beauty" that need added protection, the governor's attorney, Robert Lohn, told the House Natural Resources Committee Wednesday.

Lohn said that the governor's HB770 would help provide that protection by creating a commission to designate "areas of state concern" which could lead to a special plan and management techniques.

This is the third legislative session that has been asked to enact this type of law. Bob Kiesling of the Environmental Information Center told the committee that HB770 isn't the best answer to land-use planning, but that it's still long overdue.

Opponents called the bill an encroachment upon property rights and local control.

Rep. Hal Harper, D-Helena, who is carrying the bill for the governor, said the philosophy behind it is that an ounce of prevention is worth a pound of cure, and that it would put state planners in partnership with local governments.

The bill provides that an area of state concern may be nominated by a governing body or by 25 citizen petition signers in the county. If the area wins local approval, it goes to the state commission, made up of the director of the Department of Community Affairs and four citizens appointed by the governor.

Lohn said the bill adds only two things to the planning powers that cities and counties already have: ability to get state agencies to cooperate, and a special body of expertise to help localities. He said the state would not be able to ram anything down local throats.

Peter Jackson, executive of the Western Environmental Trade Association, said his ranch is a "jewel in the crown of beauty" and that somebody might want to designate it an area of state concern. Somebody might want to designate it an historical site because it was the scene of the last stagecoach robbery in Montana, said Jackson, while "I want to put a circular irrigation system there."

Lohn said that prior rights would not be destroyed by the bill.

Other opponents included lobbyists for rancher groups, the state Chamber of Commerce, power companies, oil men, and coal developers.

Harper urged the committee to forget about organized groups and lobbyists and think about the people in their areas who are worried that development will destroy their lifestyle.

The committee took no action on the bill.

Minutes of
Montana House of Representatives
Natural Resources Committee
February 24, 1977

HOUSE BILL 770

Representative Harper passed to the members copies of the suggested amendments--a copy of which is Exhibit 3 of the minutes. He went through the amendments and discussed the bill briefly.

Representative Hurwitz said they had 40% of the voters in his area come in opposition to the designation of an area of critical concern. He said they accused the local government of taking their rights away. The feeling was to designate an area the owner must be compensated.

Representative Harper moved the adoption of the amendments to the bill--those on the exhibit sheet and a committee amendment which would increase the number of people from 25 to 50 or 1% of the qualified electorate, whichever is greater, on page 5, line 25 and on page 7, line 24. Motion carried--voting "no" was Representative Hurwitz; absent was Representative Hirsch. Representative Harper moved the bill as amended do pass. Voting yes were Representatives Sheldon, Harper, Cooney, Frates, Huennekens, Kessler, Metcalf; abstaining was Representative Quilici and Bengtson; absent was Representative Hirsch. Vote was 7 yes, 7 no, so the bill receives an "AS AMENDED WITHOUT RECOMMENDATION" recommendation from the committee.

